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## CONFLICT BETWEEN CUSTOMARY LAW AND HUMAN RIGHTS IN CAMEROON: THE ROLE OF THE COURTS IN FOSTERING AN EQUITABLY GENDERED SOCIETY

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**ABSTRACT** Cameroon's legal system is partly a product of colonialism. Colonialism resulted in the imposition of extraneous legal values in the territory. In addition to those values, customary law and human rights are also recognized. Cameroon's legal system thus consists of a mosaic of rules. Among those rules, customary law and human rights have a problematic relationship because many of their values conflict. Some customary values offend human rights and adversely affect the status of women. Although attempts have been made through the legislative process to eradicate discriminatory customary values, in practical terms, little or no success has been achieved. Consequently, the courts have assumed the role of ensuring that customary law responds to the dictates of human rights through the adoption of an egalitarian jurisprudence in the application of customary law. The courts rarely expressly use the language of human rights in the determination of cases; however, by applying the repugnancy test, the courts have at least inadvertently introduced the language of human rights into their jurisprudence. The courts' gender-sensitive approach in the enforcement of customary law has an impact on women's rights. This article suggests that the work of the courts should be complemented by other gender-based initiatives.

**Key Words:** Customary law; Human rights; Gender discrimination; Repugnancy test; Egalitarian jurisprudence.

### INTRODUCTION

Like most sub-Saharan African states, Cameroon's contemporary legal landscape has been influenced by colonialism. The colonial occupation of Cameroon by the Germans, and later the British and the French during World War I<sup>(1)</sup>, led to the imposition of Western legal models<sup>(2)</sup> into the territory, which, hitherto, had known only a fragmentary system of norms, based on native laws and customs. The various constitutions adopted since independence have maintained the pre-independence laws observed in the territory (Johnson, 1970; Salacuse, 1969). After independence in 1960, Cameroon incorporated into its developing body of municipal law a series of human rights instruments, including the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979, the African Charter on Human and Peoples' Rights (ACHPR) 1981, and the Convention on the Rights of the Child (CRC) 1989.<sup>(3)</sup> Upon ratification, these international treaties and covenants are incorporated directly into the body of municipal law

and have direct effects; indeed, Cameroonians can invoke rights and be subjected to duties arising from such treaties and covenants. Cameroon's legal system thus consists of a plurality of rules with received colonial laws, municipal legislation, human rights, and customary laws co-existing and interacting with each other. Much of law reform is devoted towards reconciling the values of the legal system, some of which, at best, are conflicting.

The existence of a plurality of rules in the legal system poses theoretical and practical problems. One of the most persistent, and perhaps intractable, problems is the difficulty of unifying the legal process. The task of unifying the law is much more difficult in Cameroon than in other African states, for not only must the polity contend with the disparate elements involved in reconciling conflicts between the various customary laws but must also bridge the gap existing between French and English-inspired legislation (Salacuse, 1969). Further, a need arises to reconcile the differences existing between customary law and received laws (including human rights). These challenges have led to conflicts among laws in Cameroon. Some successes have been achieved toward reconciling the differences between received English and French laws. A unification of laws campaign is underway, which culminated in the promulgation of a unitary Penal Code 1967, a Labor Code 1992, and a Criminal Procedure Ordinance 2005. Although these enactments draw heavily on received French law, they have also been influenced substantially by principles of English law.

The successes registered in reconciling some of the values of received English law with those of French law are compromised by the difficulties involved in reconciling customary law with statutory law (and human rights). This is because of the peculiar nature of customary law. Unlike human rights, Cameroonian customary law represents a fragmentary regime; each of the over 250 ethnic groups recognized in the country possesses its own customary rules. Although there are similarities in the rules, there are also significant differences. Thus, the need arises to reconcile the plurality of applicable customary rules as a prelude to bridging the gap between customary law and statutory law. Unfortunately, due to the negative perception of customary law and, perhaps, a lack of sufficient resources and political will, little or no attention is being paid to accomplishing this.

The lukewarm attitude demonstrated in relation to customary law is partly informed by the difficulties involved in reconciling the values of customary law with those of human rights. Customary law is imbued with a discriminatory structure: it is patriarchal in nature and perceived as a way of looking at the world from the vantage position of men in traditional African and, mostly, non-Western societies. In this connection, it is frequently looked upon as discriminatory towards women, primitive and agrarian in conception, unsuitable for the demands of the capitalist economy, a hindrance to national development (Vernon & Poulter, 1972; David & Brierley, 1978) and a flagrant challenge to some of the core constitutional values of the country.

Due to some of those negative features, there is a strong prejudice against customary law in favor of human rights. Nonetheless, customary law continues to play a crucial role in sub-Saharan Africa. It offers important benefits to vulnerable groups in society that are unavailable under other normative systems, not

least statutory law. Despite disempowering women in the domain of inheritance and succession, it empowers them in other domains. Indeed, it has been seen as a source of empowerment to single parents, concubines, and illegitimate children (Rebouche, 2006; Kiye, 2007). In contrast, despite being regarded favorably, the human rights regime has been criticized as insufficient (Ross, 2003) and as a liberal project that deliberately fails to reach out to other cultures (Mutua, 2002).

One of the most notorious values of customary law is gender discrimination. Cameroonian customary law regards women as legal minors who can neither freely contract nor acquire and dispose of property. This attitude towards women is reinforced by the notion of dowry,<sup>(4)</sup> which has denied them succession and inheritance rights. Cameroon has embarked on the use of legislation to reform some customary laws. Specific discriminatory values have been outlawed. On occasions, the criminal law is used to deter the enforcement of “barbaric” customary acts against women. In addition to the relevant provisions of the 1996 constitution, the Civil Status Ordinance 1981 (as subsequently amended), remains the most authoritative instrument used for the eradication of archaic customary practices. However, the use of legislation has failed to reform discriminatory customary values. Because of weak enforcement mechanisms, outlawed discriminatory practices are still being observed in society, in total disregard of the law. Consequently, the courts have assumed the role of combating discriminatory practices through the adoption of an egalitarian jurisprudence in the enforcement of customary law.

Gender discrimination adversely affects development. The relationship between gender discrimination and sustainable development cannot be over-emphasized. In the field of land law, discriminatory customary practices against women inhibit development. Most customary practices exclude women from land ownership and only provide them with usufruct rights. Preventing women from gaining equal access to land, which is the main source of livelihood in sub-Saharan Africa, inhibits sustainable development, as a majority of the population is denied the possibility of involvement in the production process (Tripp, 2004). Advocates for the reform of traditional African systems of land tenure often point to them as major obstructions in the way of economic development and the attraction of foreign investment (Vernon & Poulter, 1972). Clarity of title is seen as indispensable for fast economic and agricultural development as opposed to customary tenure, where most members have only secondary rights over land.

The negative impact of gender discrimination on sustainable development has prompted Cameroon to embark on measures to improve women’s access to land, to promote rural development. One of the most compelling measures contemplated is to overcome decades of gender stereotypes in society. This article explores, therefore, gender discrimination by customary law in Cameroon and discusses the role played by the court in combating discriminatory practices. It is divided into three parts. The first part explains the concepts of customary law and human rights and examines their place in the legal system. The second part discusses some of the conceptual differences and conflicts existing between human rights provisions and customary values. The third part illustrates, through case law studies, the extent to which the egalitarian jurisprudence of the superior courts has

impacted women's rights in the country.

## CUSTOMARY LAW, HUMAN RIGHTS AND THE LEGAL SYSTEM

Amongst the sources of law recognized in Cameroon are customary law and human rights. The norms in the legal system are arranged in a hierarchy: human rights values are at the top and customary law is at the bottom. The legal system also establishes a court system, based on a hierarchy. The Supreme Court is the highest appellate court and the customary court is the most inferior trial court. This section critically analyzes the notions of customary law and human rights, examines the legal hierarchy of human rights over other normative norms, and discusses customary justice within the court system.

### I. Custom as a heterogeneous and unbounded entity

Customary law consists of custom, local usage and belief of the community. Customs are said to vary considerably according to communities and to reflect the social attitudes of the time (Olawale, 1956, 1962; Ngwafor, 1993). Most of these customs are said to have been handed down from time immemorial and from generation to generation, so that everyone in the community knows them, or is deemed to know them (Anyangwe, 1987). This view is imbued with an essentialism that portrays custom as a bounded and homogenous package, devoid of any outside influences. Recent anthropological research has conclusively demonstrated that custom is always a process, which is produced historically, is interconnected, and internally contested (Fox, 1998; Nyamu, 2000; Merry, 2001; Ibhawoh, 2001). A new position has emerged since the 1980s that challenges the ancestral origins of customary law: it asserts that customary law underwent such a transformation in the colonial period that it can be said, in its new form, to be a colonial creation (Chanock, 1995). Supporting this assertion, Francis Snyder writes:

The concept [of customary law] is seriously misleading as a point of theoretical departure ... though customary law implies historical continuity, its origins are actually relatively recent. The notion of "customary law" in Africa and elsewhere was specific to particular historical circumstances. It belonged to an ideology that generally accompanied and formed part of colonial domination. (Snyder, 1981: 49–90)

The description of custom as contestable, heterogeneous, fluid, shifting, emergent, contradictory, processual, and unbounded, among other characteristics that aim to capture the indeterminateness of the concept, does not reflect attitudes or correspond with practices in rural communities. In traditional Cameroonian society, custom is still viewed through the lens of essentialism. Generally, the view is that customs represent a cultural package inherited from the ancestors and from which no deviation is permitted. Being part of a cultural package, customs are

expected to be observed in every situation, regardless of circumstances. It is not difficult to explain why custom is viewed in this manner: the general reliance on fetish beliefs and rituals. Custom is viewed as a form of oral history: a recollection of the past, a reflection of the status quo and a measure to determine the future (Ebo, 1995). Thus, the unraveling of an event or, more generally, of an occurrence of any type, is almost always attributable to the actions of the forefathers. Given this, no rational explanation is accepted for the occurrence of seemingly explainable situations without recourse to the ancestors. The everyday activities of the living are virtually controlled by customs, as dictated by the aspirations of the ancestors, through a series of fetish beliefs. Due to the superstitious dynamics underlying traditional life in Cameroon, demands for change in customary values are generally never entertained for fear of negative reprisals from the ancestors, given that such changes may necessitate a departure from the ways of the past.

This conservative view of custom, which fails to reflect recent scholarship, is readily enforced by customary courts in Cameroon. The decision in *Chief of Besonabang v. Agbor Neba & Lucas Ndip*<sup>(5)</sup> provides a good illustration of this perception of custom. The chief (traditional leader) of a village community called Besonabang, located in Manyu Division,<sup>(6)</sup> brought an action against two of his subjects for violation of a customary rule in the performance of a traditional rite. Custom dictates that the rite called '*etak*', which is performed during a death celebration, should be performed by two elderly male persons selected by the chief, each designated from one of the two villages of Besonabang. The defendants admitted to have performed the rite without the consent of the chief and in violation of this custom. The Bayang Customary Court, Mamfe,<sup>(7)</sup> entered judgment in favor of the chief. It concluded by advising the parties as to their responsibilities under custom. It stated:

The court calls on the both parties to reconcile so as to enhance unity, love, and development in Besonabang in particular and Mamfe as a whole... The both parties are to follow **the old tradition of their forefathers** in performing [the] traditional rites of '*etak*' – one old man from Abane and one from Boh Etchu. (emphasis added)

In its judgment, the customary court expressed its preference for judicial conservatism: it requested the parties to conduct the traditional rite in accordance with the "old tradition of their forefathers", which required the rite to be performed by the oldest men, one from each of the two villages. Nothing short of that would amount, in the court's interpretation, to the strict observation of tradition. The court's position reflects the state of affairs in rural settlements where custom, rather than being viewed as an evolutionary concept, is perceived as static and reflective of a cultural package inherited from the ancestors. Although liberal voices have started penetrating the villages, they are usually overruled by conservative forces. The case does not suggest, in any way, that customary law is static and bounded. Rather, it illustrates the dominant influence of conservative forces in the construction of customary law in traditional societies.

Not all customs and usages within the community are regarded as law. Some are denuded of the quality of 'lawness'. Based on the jurisprudence of the superior courts, a custom only becomes customary law upon its recognition in the state legal system. Such a custom must comply with the requirements of S. 27(1) of the Southern Cameroons High Court Law (SCHL) 1955 (discussed below). This provision has resulted in a divergence in customary laws: norms recognized by the court as customary law may not necessarily correspond with norms recognized as such in society. The reason for this divergence is obvious. When the court rejects the enforcement of a custom, it does not prevent the custom from being observed as customary law in society, thereby leading to a divergence between what the court considers customary law and what is socially recognized under that name in society. The implication of S. 27(1) is that the onus of determining what norm qualifies as customary law shifts from the people to the court.

Not all customs develop unconsciously in society. Some develop from customary legislation in the form of enactment by a council of elders or the rulers of the community. The chief sometimes legislates by making verbal proclamations to the people in the village hall or through the Village Council. The object of such legislation may be to create a new custom, to amend an existing one, or to repeal an old one. In this way, customary law is made to move with the times through adaptation to new exigencies (Anyangwe, 1987). Customary legislation appears in five forms: namely, legislation by Chief-in-Executive Council, Chief's decree, institutional legislation, legislation in public assembly, and judicial legislation (Olawale, 1956).

Custom is a form of law in Cameroon. Nonetheless, custom is not expressly recognized either by the various constitutions or the post-independence laws (Salacuse, 1969). Although some post-independence legislation implicitly recognizes custom,<sup>(8)</sup> the legal authority of custom as a source of law in Anglophone Cameroon is derived from colonial legislation, the SCHL, 1955. Section 27(1) is proclaimed as the most authoritative provision expressly recognizing custom. It states:

The High Court shall observe, and enforce the observance of every native law and custom, which is not repugnant to natural justice, equity and good conscience, nor incompatible with any law for the time being in force and nothing in this law shall deprive any person of the benefit of any such native law and custom.

Inasmuch as the provision recognizes customary law, it also establishes the criteria for its enforceability in the legal system: it must neither be repugnant to natural justice, equity, and good conscience nor be incompatible with any written law. That is, the custom must pass the repugnancy and incompatibility tests. Thus, in Cameroon, legislation, which is the primary source of law, establishes the modalities for the application of customary law. The statutory courts have often relied on this provision to invalidate discriminatory rules in customary law. The repugnancy test has become a window of opportunity for the introduction of human rights to the language of the court.



## II. Constitutional Supremacy of Human Rights over other normative norms

Alongside customary law, human rights are recognized in Cameroon. Human rights are conceived as values imbued within humanity. Accordingly, an implicit presumption arises to the effect that human rights are universal, found in all cultures, and shared across races. Generally, human rights are often viewed in an individualistic manner, where the focus is placed on political and civil rights, as opposed to economic, social, and cultural rights (Fox, 1998). Human rights have become the new emancipatory rhetoric in global politics. Indeed, activists have invoked the language of human rights to establish claims for their selfish interests (Cowan, 2003).

The human rights corpus is presented as a neutral description of rights and entitlements; thus, it is perceived as devoid of considerations that are not inherently natural in mankind. However, recent attempts at prioritizing and politicizing human rights in some jurisdictions have put these claims into question (See Mullally, 2005). The current human rights regime has been criticized as a Western-oriented agenda, aimed at transforming non-Western societies. From this perspective, it is viewed as a form of cultural imperialism (Mutua, 2002). Mutua argued that the regime is constructed as the “final answer” to contemporary problems, which to him it is not. Fiona Ross also pointed out a shortcoming in the regime: when human rights are used to measure wrongs (Ross, 2003). The cultural relativism argument also renders the regime problematic. Although the argument of culture has often been advanced to oppose attempts at universalizing the human rights corpus, paradoxically, culture is perceived as being protected by human rights (Engle, 2000).

The preamble to the 1996 constitution makes an allusion to principles of human rights, which are acknowledged as constitutional values. In fact, these principles are set out in preambular paragraphs 4 and 5. Paragraph 4 makes reference to non-discrimination, based on race, religion, sex, and belief, whereas paragraph 5 states that the people of Cameroon:

Affirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto...

The most authoritative provision of the constitution recognizing the importance of human rights is Article 45. It states:

Duly approved or ratified treaties and international agreements shall follow their publication, override national laws, provided the other party implements the said treaty or agreement.

Thus, all international treaties ratified by Cameroon, including the several human rights treaties acceded to, become part and parcel of Cameroonian law. Most of these treaties established rights and duties that are justiciable before Cameroonian



courts. Article 45 of the constitution further establishes a hierarchy of norms: once ratified, a treaty provision becomes binding, ranks higher than, and prevails, over a municipal law, not least a customary law in conflict with it. However, this is only applicable on the basis of reciprocity. By virtue of the letter and spirit of Article 45, customary law is inferior and subjected to human rights scrutiny. Customary law is also inferior to municipal law. This is evidence from the provision of S. 27(1) of the SCHL, 1955 (discussed above), and from Article 1(2) of the 1996 constitution, to the effect that the Republic of Cameroon:

...shall recognize and protect traditional values that conform to democratic principles, human rights and the law.

“Traditional values” refer to the customs of the people which, to be enforced per article 1(2), must conform to democratic principles, human rights, and the law. This provision expressly subjects ‘traditional values’ to the scrutiny of human rights and municipal law. It therefore stands to reason that, in the hierarchy of legal norms in Cameroon, international treaties, including ratified human rights treaties, are superior to all other norms. Further, statutory municipal law is superior to customary law, which stands at the bottom of the legal hierarchy. Despite the constitutional supremacy of human rights, Southern Cameroonian courts mostly rely on the provision of S. 27(1) of the SCHL, 1955, rather than on the relevant human rights provisions, to invalidate discriminatory rules of customary law.

### III. Customary Justice and the Court System

The organization of the courts is set out in Article 3 of the Judicial Organization Ordinance, 2006.<sup>(9)</sup> There are Customary Courts, Courts of First Instance, High Courts, Courts of Appeal, State Security Court, and the Supreme Court. The constitution also provides for a Court of Impeachment (Article 53(1)), and the Constitutional Council (Article 46). Based on their various functions and jurisdictions, the courts are classified into two main categories: ordinary and special courts. The special courts include the State Security Court, Court of Impeachment, Constitutional Council, and Military Courts (provided for under Ordinance No. 87–89 of July 15, 1987). This paper focuses on the ordinary courts because it is in these courts that the interaction between customary law and human rights occurs.

The courts are located along geographically demarcated frontiers. Customary courts are based at the village level, Courts of First Instance at the sub-divisional level, High Courts at the divisional level, Courts of Appeal at the regional level, and the Supreme Court at the national level. Ordinary courts fall into two categories: courts of original jurisdiction and courts of appellate jurisdiction. A court of original jurisdiction is a trial court (that is, a court which is seised of a dispute at the first instance without having the possibility of reviewing the same dispute on appeal). These include the Customary Court, the Court of First Instance, and the High Court. An appellate court is an appeal court (that is, a court that reviews the decisions of trial courts). These include the Court of Appeal and the

### Supreme Court.

The courts are arranged in increasing order of hierarchy. The Customary Court is the most inferior trial court and the Supreme Court is the highest appellate court (Article 38(1) of the constitution). Customary Courts exercise limited original jurisdiction, mostly on family law issues such as those associated with polygamous (or customary) marriages, including custody, succession, and inheritance rights, property adjustments and financial allocations. Their financial jurisdiction is limited to claims worth not more than 69,200 Francs CFA (approximately EUR 105). In contrast, the other ordinary courts are competent to handle both customary and statutory issues. As a trial court, appeals emanating from customary court go to the Court of Appeal and further appeals to the Supreme Court. It is usually at the level of the Court of Appeal that decisions of customary courts are subjected to human rights scrutiny. However, as custom and statute-applying courts, the Court of First Instance and High Court are not precluded from subjecting customary law to human rights scrutiny.

The administration of customary law is not exclusively the reserve of ordinary courts. Customary justice is also exercised by unofficial customary courts, which are administratively acknowledged under decree No. 77/245 of July 15, 1977. Article 21 empowers chiefs, where laws and regulations do not provide otherwise, to settle disputes using customary law. Because chiefs are not part of the judicial system, by authorizing them to settle disputes using native laws and customs, this is an implicit endorsement of unofficial traditional courts. In fact, such unofficial traditional courts deal with the vast majority of disputes in Cameroon. They are widely used in rural and poor urban areas where there is often minimal access to official state justice. They tend to address issues that are of deep concern to poor people, including security and local crime, protection of land, property, and livestock, and resolution of family and community disputes. They are often preferred for a variety of reasons, including low cost, speed, accessibility, cultural relevance, and responsiveness to poor peoples' concerns (Kane et al., 2005).

Customary courts tend to be relatively conservative when it comes to administering justice. This is not surprising because, as custom-applying courts, as opposed to statute-applying courts, they are bound to apply the customs prevailing within the jurisdiction of the courts which, unfortunately, are constructed mostly on the basis of essentialist assumptions. In this connection, most of their decisions, especially on succession and inheritance, are almost always subjected to review by appellate courts as they tend to undermine the legal capacity of women to acquire, own, and dispose of property.

Unlike statutory law, customary law is mostly proven in court through the recollection of expert witnesses. This state of affairs prevails because customary law has yet to be restated. A Restatement provides the opportunity for customary law to be placed in a written form of sufficient authority to warrant a court of law to rely on it. Like the judges that man customary courts, most of the expert witnesses are male elders, deemed to be knowledgeable in customary law but who, unfortunately, tend to portray a bounded notion of custom. Although this notion of custom, enforced by customary courts, is contested by feminist movements in

society, unfortunately, the views expressed by these progressive forces have rarely impacted the decisions of these courts.

## DISCRIMINATORY CUSTOMARY LAWS VERSUS EGALITARIAN HUMAN RIGHTS VALUES

Customary law and human rights have a complex relationship. While acknowledging this, this section is limited to analyzing the conceptual differences between both values. Despite their recognition in the legal system, customary law and human rights share little in common: their values are mostly conflicting and their relationship is often characterized by friction and tension. Although customary law is based on ethnic identification, it also possesses certain distinguishing features. Some of these features conflict with those of human rights: customary law is fragmentary in nature while human rights are purported to be universal; customary law advocates forced marriages whereas human rights advocate consent to marriage; customary law upholds group rights as opposed to modern human rights, which are conceived as individualistic in nature and emphasize civil and political rights; customary law recognizes banishment as a form of punishment as opposed to belief in the free movement of persons under human rights; and customary law legitimizes gender inequality whereas human rights values propagate non-discrimination.

Gender discrimination is one of the most notorious features of customary law. The woman finds herself in a male-dominated society. Men control the institutions that have been set up around her. In traditional Cameroonian societies, a man's wealth is still said to be measured by the number of wives and children he has. Generally, women are considered as property and cannot own property. This view was corroborated in a 1995 survey conducted in rural areas of Cameroon. It was observed that:

Traditionally, women are men's property, to be handed over to male inheritors, along with other property at the time of a husband's death. (Ngwasiri & Nje, 1995: 13)

Gender discrimination under customary law is partly founded on the notion of dowry. Indeed, under most customary laws, dowry is used as a measure to justify certain discriminatory practices against women, notably the refusal to grant them inheritance and succession rights. Under customary law, dowry has great significance. In the South West Court of Appeal case of *Kwela Theresia Amih v. Amih Sam*,<sup>(10)</sup> his Lordship, Justice Ebong, explained the role of dowry in customary marriages. He wrote, at page 2 of his judgment:

Dowry in customary marriage plays an important part as dowry is in fact the first indication of the seriousness of the suitor not only in Cameroon but in most African countries. But to whom this dowry is paid differs from

one custom to other, but in most cases the dowry is paid to the parents and family of the woman, and not to the woman.

Generally, dowry is the symbolic act that validates a customary marriage and signifies its dissolution: in principle, only on full payment of the dowry by the bridegroom-to-be could there be said to be a valid marriage. Conversely, only on the full refund of the dowry by the wife to the husband could a marriage be considered terminated. However, in situations where no dowry is paid, logically, none will be refunded. Because of the serious consequences attached to dowry, it was held in *Musanga Mendi v. Finger Menching*<sup>(11)</sup> that a father may sue his son-in-law to be to repay the part dowry that was paid on his daughter's behalf, so as to clear any obstacle on her path, should she decide to marry someone else. The father of the woman sued his prospective son-in-law to appear in court and receive the dowry that he had paid for the daughter. Because the daughter was about to marry someone else, there was a need to refund the dowry received from the previous suitor, so as to clear her path to marrying the new suitor. Arguably, dowry is the root cause of the problems facing women in traditional African societies (Ngwafor, 1993), and may have influenced their status vis-à-vis property, as revealed in the dictum of Justice Inglis (as he then was) in *Achu v. Achu*.<sup>(12)</sup>

...Customary law does not countenance the sharing of property, especially landed property, between husband and wife on divorce. The wife is still regarded as part of her husband's property. **That conception is understood by the payment of dowry on marriage and on the refund of same on divorce.** (Emphasis added)

Thus, once dowry is paid, a woman becomes part of her husband's estate. Given this, upon divorce, she leaves the matrimonial home with virtually nothing, except her private and personal belongings.

Gender inequality as sanctioned by customary laws is best reflected in the domain of succession and inheritance. Under most customary laws, women cannot own or inherit property from their parents or husbands. In fact, women are regarded as legal minors. In the event of the death of her husband, a widow may be inherited along with other property by her husband's relatives. The practice of levirate<sup>(13)</sup> is widespread in certain regions of Cameroon and is classified as a 'forced' marriage (Scharf & Mattler, 2005). The widow finds herself in a difficult situation made worse by the fact that dowry was paid on her behalf before the solemnization of her marriage. Her failure to refund the dowry makes the widow an object of inheritance. Thus, the death of the husband does not terminate the institution of marriage under customary law. Forced marriage is criminalized under S. 356 of the Penal Code, 1967.

Further, customary law advocates early marriages. A girl child before the age of puberty or below the statutory prescribed age can be married off, especially to a well-to-do suitor. This practice is compounded by the perception of women in traditional societies. Girl children are perceived as a burden to their families

and as objects to be used for the generation of wealth. It is not surprising that, in times of hardship, a traditional Cameroonian family will be willing to give out a girl child into early marriage or, better still, traded off in marriage in exchange for bride wealth. Like forced marriages, early marriages are prohibited in Cameroon but the practice is, unfortunately, still regularly observed in rural settlements. Early marriage denies women their basic rights, including the possibility of having an education, making them wholly dependent on their husbands.

Despite these negative features, customary law remains relevant in sub Saharan Africa and continues to play a crucial role in society. In fact, the justice needs of a majority of Cameroonians are fulfilled through customary processes. Customary law offers protection to single parents, particularly women, concubines, and illegitimate children, protection that is unavailable under statutory law. Unlike customary law, statutory law only offers protection to married women and legitimate children in the advent of divorce, and no provision is made in favor of a single mother, concubine, or illegitimate child should her partner or father die intestate. Under statutory law, the woman and child may not secure any benefit from the administration of the deceased's property whereas under customary law, provided she bears him children, she is allowed to make use of the deceased's property as a secondary beneficiary to care for his children (Kiye, 2007). Prof. Anne Griffiths has also demonstrated, through her study in Botswana, the benefits to women of customary marriages over Western-style marriages; women were disenchanted with the attempts to proscribe customary marriages in favor of Western-style marriages because it was realized that the benefits offered by customary marriages were not available under monogamous or Western-style marriages (Griffiths, 2001).

Organizations, such as the Bakweri Land Claims Commission (BLCC), have invoked indigenous rights under customary law to protect communal land from expropriation. In a dispute before the African Commission on Human and Peoples' Rights (Communication 260/2002), an indigenous group in Fako Division, the Bakweri's, through the BLCC, brought an action against the government of Cameroon invoking indigenous rights under customary law to prevent the privatization of the Cameroon Development Corporation, which would have resulted in the transfer of indigenous land to a transnational corporation (See Kiye, 2007). The relevance of customary law has also been invoked due to the often negative results realized in the implementation of so-called egalitarian rules under statutory law and human rights. Statutory tenure, consisting of titling and registration, has disempowered women by extinguishing their secondary rights over property (See Nyamu, 2000). These rights, which are beneficial to women, are recognized under customary law.

In contrast to customs, human rights values are said to advocate egalitarian principles that presuppose gender equality and non-discrimination between men and women. They further prohibit forced and early marriages. Gender equality and non-discrimination are fundamental principles under human rights, and are provided for in most human rights instruments. An example is Article 3 of the ICCPR,<sup>(14)</sup> 1966. Provisions mirroring this are expressly provided in the constitution. See, for example, preambular paragraph 5, which advocates equal rights

between men and women.

Forced and early marriages, which are manifest in customary law, are opposed by human rights values. Numerous human rights instruments prohibit forced and early marriages and provide equal rights to the parties in marriage and at its dissolution, including the UDHR, 1945,<sup>(15)</sup> the United Nations Convention on Consent to Marriage, Minimum age for Marriage and the Registration of Marriages, 1964<sup>(16)</sup> and the CEDAW, 1979.<sup>(17)</sup> Most of the constituent acts of forced marriage, including acts of rape, sexual slavery, forced pregnancy, enslavement, and torture, have been recognized as crimes against humanity, but forced marriage itself had never been recognized or even identified as a separate crime against humanity before April 2004 when the Special Court for Sierra Leone became the first ever war crimes tribunal to charge defendants with the crime of forced marriage (Scharf, 2003).

Most human rights treaties do not provide a minimum age for marriage. Rather, they provide a margin of appreciation to domestic authorities to set the minimum age. In Cameroon, according to S. 52 of the Civil Status Ordinance 1981 (as subsequently amended), the minimum age for marriage for women is 15 and that for men is 18. The CRC, 1989, defines a child as anyone under the age of 18 years. The treaty-monitoring Committee for the Women's Convention called on countries to legislate a minimum marriageable age of 18 (General Recommendation 21, 1994). The African Charter on the Rights and Welfare of the Child (entered into force in 1999) and the protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2003, also call on states to legislate a minimum age of 18 (OAU Doc. CAB/LEG/24.9/49 and July 11, 2003, respectively) (Bunting, 2005).

Despite their conceptual differences, the legal system recognizes customary law and human rights. The relationship the values foster with each other is rarely complementary. Rather, due to their divergent features, there is a relationship between them characterized mostly by tension, friction, and conflict. Customary values, including gender discrimination and widow inheritance, have been subjects of criticism. Regardless of some of its shortcomings, customary law has stood the test of time and continues to play an essential role in rural areas of the country. In mitigating the tense relationship between customary law and human rights, the superior statutory courts have often rejected the enforcement of customary values that conflict with those of human rights.

## THE STRUGGLE FOR GENDER EQUALITY IN THE CAMEROONIAN COURTS

Non-discrimination and gender equality are principles enshrined in the constitution and in several instruments ratified by Cameroon. Cameroon has also introduced legislation, including the Civil Status Ordinance 1981 (as subsequently amended), that contains provisions aimed at eradicating specific discriminatory practices. Despite these legislative initiatives, discriminatory customary values are still commonly observed. Due to the failure of legislation to adequately address



the situation, the courts have assumed the role of combating discriminatory practices through the adoption of an egalitarian jurisprudence. The role of the courts has been facilitated by the hierarchies established in the legal system: the constitutional hierarchy of human rights over municipal law by virtue of Article 45 of the constitution, and the supremacy of statutory law over customary law by virtue of S. 27(1) of the SCHL, 1955. On the strength of these provisions, the courts have rejected the enforcement of customary law when it conflicts with human rights and municipal law. However, rather than expressly invoking the relevant provisions of human rights, the court has relied on the provision of S. 27(1) of the SCHL, 1955, to invalidate rules of customary law. By refusing to enforce customary values that negatively impact women, the courts inadvertently worked towards the emancipation of women. This section, through an analysis of case law, discusses the role of the courts in promoting an equitably gendered society. The cases to be discussed are derived from the former Southern Cameroons.<sup>(18)</sup> The cases deal with widow inheritance and succession rights, which are concepts manifest of gender discrimination under customary law. In analyzing the cases, the issues raised are expressed in human rights terms as the customary rules underlying these concepts are contrary to fundamental human rights values.

One of the consequences attached to the payment of dowry under customary law is that on the death of the husband a widow may be inherited should she fail to refund the dowry paid on her behalf during the solemnization of her marriage. The High Court decision in *David Tchakokam v. Keou Magdaleine*<sup>(19)</sup> challenges this customary position. According to the facts, the widow's husband was deceased. During his illness, his nephew took care of him. Upon his death, the widow was, through levirate, married to the nephew of her deceased husband. They had several children. A disagreement arose between the parties when the widow realized that her new 'husband' was attempting to establish title over the property left behind by her deceased husband. She then obtained letters of administration<sup>(20)</sup> over those properties and questioned the legality of her levirate marriage. Prompted by these allegations, the deceased's nephew brought an action requesting the court to validate the marriage. He also challenged the widow's claim to her deceased husband's property on the grounds that, being an object of inheritance herself under customary law, she was not entitled to inherit property jointly developed by himself and his late uncle, the deceased husband of the widow. He requested the court to grant him title over the properties and to consider their levirate marriage valid.

Her Lordship, Justice Mrs. Vera Ngassa, rejected the requests. She ruled in favor of the widow, gave her title over all the contested properties, and pronounced their levirate marriage invalid. She questioned whether the marriage ever took place in the first place and argued that, even if it did, it was repugnant to natural justice, equity, and good conscience and was thus incompatible with Cameroonian law. To justify her decision, Her Lordship wrote:

All in all, I am unable to find that there was ever a customary levirate marriage between plaintiff and defendant and, even if there were, the law



will not give its blessing to a marriage that is not only obnoxious and repugnant to natural justice but obviously against the written law, for not only is it contrary to S. 77 of the Civil Status Ordinance but amounts to the crime of forced marriage under S. 356 of the Penal Code, being against the defendant's will and without her consent. Section 27 of the SCHL clearly does not permit this court to enforce a marriage which is liable to be voided under our law. (Cited in GLR,<sup>(21)</sup> 1999: 119)

Addressing the discriminatory custom under consideration Her Lordship demonstrated her contempt in these words:

Now, any custom which says that a woman, or any other human being for that matter, is property and can be inherited along with a deceased estate is not only repugnant to natural justice, equity, and good conscience but is actually contrary to the written law... Suffice it to say that plaintiff did not inherit defendant and defendant is not an object of inheritance. The very terms in which that question is couched are so objectionable as to make it one of the most unpalatable questions a common law court could ever be asked to answer... (Cited in GLR,<sup>(21)</sup> 1999: 119)

At the center of this case is the conflict between the custom of forced marriage, expressed through levirate or widow inheritance, and the human rights value of consent to marriage. The widow is subjected to levirate on the death of her husband. She finds herself in the difficult position imposed by custom and she concedes. Consequently, she loses title over her deceased husband's estate, which passes to her deceased husband's nephew (her new 'husband') as she herself had become an object of inheritance. This custom is rejected by the court where the presiding Judge, Mrs. Vera Ngassa, a strong feminist activist,<sup>(22)</sup> invoked the relevant provision of the Civil Status Ordinance (S. 77), the Penal Code (S. 356), and implicitly human rights, to reject the enforcement of the custom. The case further demonstrates the extent to which the court is committed to advancing the rights of women in Cameroon. Despite the fact that the parties had children during the levirate marriage, the court still went ahead to nullify it, conveying a strong message that, whatever the circumstances, a discriminatory custom will not be permitted to surpass principles of human rights. The court also demonstrated its willingness to resort to the criminal law to punish perpetrators of human rights abuses against women: it implicitly recommended the prosecution of the deceased husband's nephew for allegedly forcing his late uncle's widow into marriage. Her decision symbolizes victory for the human right value of consent to marriage.

Customary law also dictates that, in the presence of suitable male heirs, a daughter cannot inherit on the intestacy of her deceased father. The courts have often rejected this patriarchal interpretation of custom as reflected in the High Court of Fako decision in *Nyanja Keyi Theresia & 4 Ors. v. Nkwingah Francis Njanga and Keyim – administrators of the estate of Keyi Peter*.<sup>(23)</sup> The deceased, who was polygamously married, died in 1997. During his illness and burial ceremony, his brother and his cousin took care of him. After the burial, on the

strength of a family meeting, the deceased's brother and cousin were appointed next of kin<sup>(24)</sup> to the deceased's estate on behalf of the children who were by then adults. They were subsequently issued letters of administration over the deceased's estate. The deceased's daughter disapproved of the way her father's estate was administered, alleging that the administrators had failed to consider the interest of the deceased's children and had been cruel to them. The administrators claimed that the deceased's daughter and her mother had been partially responsible for the deceased's death and, by virtue of that fact, the daughter was not entitled to benefit from the estate.

The court found that the defendants (administrators of the deceased estate) had not established any proof that the deceased died as a result of the action of his daughter and her mother. And even if there had been problems between them that fact would not be weighty enough to divest her of her father's property, even on the strength of a family meeting. Accordingly, the court revoked the letters of administration granted to the defendants for poor management of the estate and made an order issuing new letters of administration to the deceased's daughter on behalf of all the beneficiaries. In conclusion, the court reiterated the position of statutory law with respect to intestate succession, thus:

The law has made statutory the order of priority of administration of estate.... From the above statutory provision the plaintiffs who are the children of the deceased ... have priority over first defendant who is a brother of the deceased who comes in the fourth position and second defendant who comes in no place at all as cousin. The first and second defendants relied on the minutes of the family meeting ... where it was decided that [the] cousin of the deceased and ... brother of the deceased were nominated administrators of the estate of [the deceased]. In that family meeting, the estate... [of the deceased] was divided to all the members of his African family including nephews. ... At these modern times when law has made provision it is absurd for any person or group of persons to set in a primitive manner and permit people to reap from where they did not sow. Even if such a decision were rooted in the culture of the deceased and the defendants, it is certainly repugnant to natural justice, equity, and good conscience. No matter what problem the deceased had with his children that did not and does not deprive them of their right of inheritance particularly as the deceased died intestate.

This case reveals the conflict between the human rights value of gender non-discrimination on the one hand and the customary value of patriarchy on the other. The deceased's brother and cousin were granted administration over the deceased's estate on the strength of a family meeting and by virtue of the fact that they took care of the deceased during his illness and burial. Although the deceased's children were capable in their own right to administer the estate, they neither demonstrated interest nor questioned the rationale of appointing their uncle and their father's cousin as administrators. In a non-customary jurisdiction, the conduct of the daughters in virtually 'assisting' relatives to assume control over

their deceased father's estate may be regarded as unreasonable. However, in Cameroon, this is rarely an isolated situation for, to reiterate, female children may only inherit property in the absence of suitable male heirs, be they brothers or relatives. Thus, it may not be presumptuous to conclude that had the defendants not abused the administration of the estate the daughters of the deceased would not have shown any interest whatsoever in it. The daughters had found themselves forced to seek administration over the estate for reasons not associated with discrimination. Nonetheless, the court was swift to identify gender discrimination in the custom under consideration, which denies female children the right to intestate succession. Invoking the repugnancy test,<sup>(25)</sup> among others, it rejected the enforcement of the custom as being contrary to a written law and therefore unenforceable.

Similarly, in the infamous legal drama of *Chibikom Peter Fru & 4 Ors v. Zamcho Florence Lum*,<sup>(26)</sup> the Supreme Court was called upon to rule on a patriarchal custom that denies a married daughter the right to succeed on the intestacy of her deceased father. The deceased died intestate in 1985 and was survived by several wives and children, most of whom were males. However, the eldest of these children, Zamcho Florence Lum, was a female. Upon the death of her father, she applied for a next of kin declaration before the Mankon<sup>(27)</sup> Customary Court. The court temporarily declared her next of kin of the estate of the deceased until a 'proper' successor was selected in the near future from among the boys proven within family circles to be worthy of controlling the estate of the deceased. On the strength of the next of kin declaration, she was then awarded letters of administration by the Mezam<sup>(28)</sup> High Court.

However, in 1989, some members of the family, including some of those who had supported her application to be made next of kin at the customary court, brought an action at the High Court requesting, among other things, the cancellation of the letters of administration granted to her. The trial judge dismissed the application but ordered Florence to render accounts of her administration of the estate to the Administrator General. Dissatisfied with the rejection of their request, they lodged an appeal against the verdict of the High Court to the North West Court of Appeal, sitting in Bamenda, the regional capital. The Court of Appeal allowed the appeal and disqualified Florence from administering the estate. Aggrieved by the decision, Florence proceeded on further appeal to the Supreme Court. The Supreme Court annulled the decision of the North West Court of Appeal and referred the matter for hearing and determination before the South West Court of Appeal, sitting in Buea, the regional capital.<sup>(29)</sup> The Supreme Court's referral was based on two recommendations: first, the North West Court of Appeal violated the preamble of the constitution by discriminating against Florence as a female and, second, a custom that prohibits married women from benefiting on the intestacy of their parents is repugnant to natural justice, equity, and good conscience and, thus, offends the provision of section 27 of the SCHL, 1955.

The South West Court of Appeal was requested to consider the original appeal filed against Florence in the North West Court of Appeal and the main issue was the allegation that she was not a fit and proper person to administer the estate of her deceased's father. The court rejected the allegation that Florence was not

a fit and proper person to administer the estate. It concluded with these words:

We have no doubt that a local custom which prohibits married females from benefiting on the intestacy of their parents is repugnant to natural justice, equity, and good conscience and violates the preamble of our Federal Constitution in that it is discriminatory. Such a custom is void and should never be enforced. (cited in CCLR, part 2, 1997: 291)

The *Chibikom* case is one of the most important that deals with a discriminatory custom. Unlike the others discussed, it exhausted the judicial process, providing an opportunity for the Supreme Court, the highest appellate court, to render an opinion on a custom that had been notoriously adjudged as discriminatory by the inferior courts. The main issue for determination by the Supreme Court was whether, in the presence of suitable male heirs, a married female child could inherit on the intestacy of her deceased father. This customary practice, which prohibits married women from inheriting from their deceased father's estate, is prevalent in Cameroon and is perceived as a measure to control and maintain family property in the line of succession of male heirs. The argument is that if married female children are provided the right to inherit landed property, it will result in the loss of the property: as an object of inheritance, she is liable to transfer ownership of the property over to her husband upon marriage. Because land is the main source of livelihood in rural communities, every attempt is made to preserve it within family circles because the survival of future generations depends on the availability of land for cultivation. Although this argument has some logic, if the dissipation of family property is to be avoided to safeguard the livelihood of future generations, it has no legal merit. In fact, it is contrary to statutory law and discriminates against women: it subjugates women and renders them accountable to men for their livelihood. The Supreme Court, implicitly using the human rights argument of gender equality, as reflected in the preamble of the constitution, rejected the contention that a married woman could not administer the estate of her deceased father. According to the Supreme Court, Florence was refused the right to administer her deceased father's estate by the North West Court of Appeal on the basis of her status as a woman and on a chauvinistic interpretation of the custom under scrutiny. The decision was a victory for the human rights value of non-discrimination.

Apart from prohibiting women from inheriting on the estate of their deceased father (as in the *Chibikom* case), customary law also prohibits widows from exercising the right to own and inherit property on the death of their husbands, a position that was successfully challenged by the court in *David Tchakokam v. Keou Magdaleine*. The subsequent decision of the Court of Appeal of the South West Region in *Elive Njie Francis v. Hannah Efeti Mangah*<sup>(30)</sup> further challenged this customary position. The deceased died in 1997 and was succeeded by his wife and eight children. The deceased's nephew alleged that at the death of the deceased (his uncle), he bought sackcloth for the widow and this act, according to custom, made him next of kin to the deceased and thus the widow his property. He also alleged that the family of the deceased had, in a family meeting,

appointed him next of kin to the estate. On the strength of the custom and the family meeting, the deceased's nephew filed an application requesting the Bwenga Customary Court, sitting in Mutengene, a small town in the South West Region, to declare him next of kin to the deceased's estate. Before his application was received by the court, the widow had earlier filed a separate application also requesting to be declared next of kin to the estate. The court consolidated and heard both applications together.

The court dismissed the deceased nephew's application and declared the widow next of kin to her deceased husband's estate on behalf of her children. Aggrieved by the decision, the deceased's nephew appealed to the South West Court of Appeal, sitting in Buea. The Court of Appeal dismissed the appeal and upheld the judgment of the inferior trial court in declaring the widow next of kin to her deceased husband's estate. It stated that, by virtue of the law that spells out the priority of inheritance in matters of intestate succession, the widow and the children of the deceased stand high in the scale when considering who will succeed the deceased. With respect to the nephew's contention that he was entitled to be next of kin by virtue of native law and custom, the court disagreed. It stated at page 5 paragraph 2:

Even if it is the ... custom that by buying the sackcloth for the widow of the deceased, the provider is deemed next of kin, that custom cannot be enforced by this court. It is repugnant to natural justice, equity and good conscience.

The issue for determination before the court was whether a custom and the verdict of a family meeting were sufficient to bestow administration over a deceased's estate on his nephew, against his widow and children. This case reveals patriarchal customary value, which sees women as minors and unfit to inherit property, in conflict with the value of gender equality. Alternatively, the constitutional principle of freedom to acquire property, read jointly with S. 77(2) of the Civil Status Ordinance 1981 (as subsequently amended),<sup>(31)</sup> conflicts with the customary principle of patriarchy.

The decision of the customary court may be considered odd. As a customary court, one might expect it to enforce the strict customary practice prevailing in the area of the jurisdiction of the court, which refuses the right to women to inherit property. In contrast, by ruling in favor of the widow, the customary court took an approach that did not resonate with customary justice. Although its decision was influenced by the welfare of the children of the deceased, the case is one of some peculiar cases where a customary court rejected the enforcement of a custom, which is notorious, and which, unfortunately, is generally observed in many parts of Cameroon. Unfortunately, the customary court did not provide a clear rationale for its decision. It can be surmised that the court's decision reveals that, even within an institution as conservative as the customary court, liberal voices are gradually gaining acceptance.

Unsurprisingly, the decision of the Bwenga Customary Court was then endorsed by the Court of Appeal. The Court of Appeal invoked the repugnancy test to

reject the custom. It saw the issue as it was: a patriarchal customary value aimed at subjecting the status of women. Consequently, the justifications advanced by the deceased's nephew were not weighty enough to warrant him being appointed next of kin. Under these circumstances, the courts' decision represents a rejection of the patriarchal norm of customary law and a victory for the values of gender equality and non-discrimination.

The cases discussed above demonstrate the extent to which the superior courts are using the repugnancy test as a measure to eradicate discriminatory customary values. Although the cases make little or no reference to human rights, nonetheless, both the facts and the circumstances reveal the saliency of human rights issues in this context. Although, no express reference was made to human rights, the superior courts have at least inadvertently established a link between their interpretation of the repugnancy test and human rights. To justify the rejection of discriminatory customary values that impact on the status of women, the courts most often make reference to the repugnancy test. In fact, the repugnancy test is seen as a window of opportunity to implicitly introduce human rights thinking into the jurisprudence of the courts.

## CONCLUSIONS

The Cameroonian legal system is pluralistic in nature. Norms such as statutory law, customary law, and human rights interact with each other. The relationships customary law fosters with human rights have attracted attention because they have divergent and conflicting features: customary law is fragmentary and human rights are purported to be universal; some customary laws are discriminatory whereas human rights values are mostly egalitarian; and customary law advocates collective and group rights as opposed to human rights that emphasize individual rights. These divergent features are at the heart of the tense relationship between customary law and human rights in Cameroon.

Some discriminatory customary values negatively impact women. Cameroon has embarked on measures aimed at reforming customary law. The Civil Status Ordinance 1981 (as subsequently amended), outlaws several customary practices deemed repugnant to national consciousness. Inasmuch as these measures deserve commendation, they have yet to produce the envisaged effects, because the legislative enforcement mechanism is weak. Customary law has also demonstrated resilience; discriminatory practices are still observed in society. The measures adopted have also failed to reduce the wide popularity of customary values in rural communities in Cameroon.

Due to the inadequacy of legislative endeavors, the courts have assumed the task of combating discriminatory practices through the adoption of an egalitarian jurisprudence. Consequently, values of customary law that violate human rights and written law are declared repugnant and unenforceable. The effect has been a rejection of discriminatory customary practices by the courts, thereby offering an opportunity for the gradual and systematic reform of customary rules. Through the use of the repugnancy test the courts have implicitly introduced the language



of human rights into their jurisprudence. Although human rights issues abound in most cases dealing with discriminatory customary values, the courts rarely expressly employ the language of human rights in determining such cases. The role of the court in addressing gender discrimination is laudable. Nonetheless, the measures are still not adequate. The courts are only able to handle cases sparingly and their impact is felt only by the parties involved in the litigation. As such, the impact of their decisions has limited reach. This problem is further compounded by the almost non-existence of law reporting in Cameroon, thereby forestalling publicity for decisions that could impact future behavior in society. In this context, the jurisprudence of the courts also offers only a small solution to an insurmountable problem.

The challenges posed by customary law in Cameroon have yet to be addressed adequately. A daunting task faced by policy makers is to ensure the effective implementation of anti-discriminatory legislation and the practical translation of the egalitarian jurisprudence of the courts into reality. A more pro-active approach would be to confront customary stereotypes in society. Only through overcoming such stereotypes would society be able to develop gender-oriented values capable of overcoming decades of gender-based violence and discrimination. Traditional leaders should be encouraged to accelerate the transformation of customary rules from their current agrarian set up to a new state, akin to the country's liberal democratic and capitalistic platform. Rural authorities should be made to come to terms with the evolutionary nature of customary rules and the need for reforms to be made that would render customary values accessible to the people and amenable to change. One practical measure would be to encourage the use of customary legislation by chiefs to provoke changes in customary law. Customary legislation, even though not a popular source of customary law in Cameroon and probably elsewhere, has been used in some jurisdictions to reform or amend values of customary law so as to reflect changed societal circumstances. This was the situation in Onitsha, Nigeria, where customary legislation was used by the chief to reform the rules governing burial rites (see Ebo, 1995). Traditional rulers in Cameroon should be encouraged to use this mechanism to alter discriminatory customary values.

An elaborate program of human rights education is likely to be one of the most effective ways of improving the protection of human rights in the country and, incidentally, eradicating customary values that conflict with human rights. Human rights values are rarely respected in the rural areas, because of a lack of awareness. Although the constitution incorporates several human rights instruments and, further, makes inferences based on human rights values in its preamble, such inferences have no true or practical meaning without an effective implementation mechanism. Despite its constructive role with regard to female emancipation, the court, an institution imbued with the task of enforcing human rights, has not been forthcoming. It is a major concern that, unlike in other jurisdictions in sub-Saharan Africa, Cameroonian courts rarely make express references to human rights, even though they are justiciable before the courts. This is attributable to the absence of a human rights culture in the country and the over-reliance by the courts on the repugnancy test. Thus, even where human rights issues abound in



cases, the courts have either failed to identify them or have expressed them in non-human rights terms. This is evidently the situation in *David Tchakokam v. Keou Magdaleine* (discussed above) where a widow is forced into marriage against her consent, which is clearly a violation of her human rights. Although the judgment may be interpreted as an implicit endorsement of human rights, the fact that it fails to expressly make reference to human rights is disappointing and worrisome. This observation is even more surprising in that the Presiding Judge, Her Lordship Mrs. Vera Ngassa, is a known feminist and human rights advocate in Cameroon. The case offered an opportunity to her lordship to use the language of human rights, an opportunity that was missed. Rather, she relied on municipal legislation and, specifically, the repugnancy test, which convey messages that are vague and ambiguous. Thus, by over-relying on the repugnancy test, Southern Cameroonian courts have relegated to the background the language of human rights.

It is my contention that to sell the language of human rights effectively, the courts must develop a more forceful rhetoric that expressly endorses human rights and which construes the struggle for female emancipation in its true connotation: the fight for women's rights. Such an approach will widen the scope, knowledge and appeal of human rights values in Cameroon and discredit discriminatory customs. In the absence of these measures, customary law will, for years to come, continue to negatively impact the status of Cameroonian women and pose serious challenges in the legal system.

## NOTES

- (1) Cameroon was under German colonial rule from July 12, 1884. With the defeat of Germany in World War I, she came under the colonial domination of France and Britain (See Ngoh, 1996).
- (2) The French introduced civil law in the former East Cameroon and the British imported common law in the former West Cameroon.
- (3) Cameroon acceded to the ICCPR and ICESCR on June 27, 1984; the CEDAW on August 23, 1994; CRC on January 11, 1993; ACHPR on June 20, 1989.
- (4) A dowry (or bride price) includes money, goods or property that the bridegroom-to-be provides to the family of the bride-to-be before the solemnization of a customary marriage. A dowry compensates the family of the bride for the emotional and physical loss of a reproductive daughter (See Pratt, 2003; Gaspart & Platteau, 2010). In traditional Cameroonian societies, it is sarcastically referred to as the money the husband uses to 'purchase' his wife and is considered to be one of the root causes of the problems affecting the status of women in Cameroon and in most of sub-Saharan Africa.
- (5) Mamfe Customary Court: Suit No. MCC/41/98: unreported.
- (6) Manyu Division is one of the six administrative divisions of the South West Region of Cameroon. The others are Fako, Meme, Koupe-Manengouba, Ndian, and Lebialem.
- (7) Mamfe is the principal settlement and divisional capital of Manyu Division.
- (8) These include: Article 2 Paragraph 2 of the constitution, 1996; Article 3 of the Judicial Organization Ordinance, 2006; and Article 21 of Decree No. 77/245 of July 15, 1977.
- (9) Law No. 2006/015 of 29 December 2006. It amended certain provisions of the Judicial Organization Ordinance, 1972.

- (10) Court of Appeal of the South West Region: Suit No: CASWP/CC/86/95: unreported.
- (11) Muea Customary Court: Suit No. 19/92–93: unreported.
- (12) Court of Appeal of the North West Region (Bamenda): Suit No. BCA/62/86 (reported in Ngwafor, 1993: 196).
- (13) Levirate is a form of customary marriage where, upon the death of the husband, his widow is married off to the deceased's relative, typically without her consent. It is customarily referred to as 'widow inheritance'.
- (14) "The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."
- (15) Article 16(1): "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."
- (16) Article 1: "No marriage shall be legally entered into without the free and full consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law." Article 2: "State Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending parties". The 1965 Draft Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages also protects the right to full and free consent to marriage and condemns child marriage.
- (17) Article 16(2): "All appropriate measures shall be taken to ensure the principle of equality of status of the husband and wife, and in particular: (a) Women shall have the same right as men to free choice of a spouse and to enter into marriage only with their free and full consent..." (3) Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."
- (18) The Southern Cameroons (also referred to as either West or Anglophone Cameroon), is the English-speaking portion of Cameroon, administered by the British during colonialism. The other portion of Cameroon (also referred to as either East or Francophone Cameroon), is French-speaking and was administered by France during colonialism. Anglophone Cameroon is currently represented by the two English-speaking regions of the North West, with the city of Bamenda as the regional capital, and the South West, with the town of Buea as the regional capital.
- (19) High Court of Meme Division (Kumba): Suit No. HCK/AE/K.38/97/32/92: reported and cited in Gender Law Report, (GLR) 1999, 111–126
- (20) A letter of administration is a document issued by the High Court, upon an application filed by the applicant, giving him/her, or anyone designated at the discretion of the court, authority to administer the property of a deceased.
- (21) Gender Law Report. (GLR)
- (22) She is a leading member of a feminist organization called FIDA Cameroon. The organization, based in Limbe, a small town in the South West Region, Cameroon, is open to membership of female legal practitioners (judges and lawyers), and law students, and it is dedicated to eradicating discrimination against women and girls in Cameroon. She is

well known for her tough talks on gender awareness and sensitization programs in the media and also for her scathing attacks on customary practices that are said to negatively impact on the Cameroonian woman. For further readings on the mindset of this judge and to understand the way in which she is perceived in Cameroon and also around the world see the *English Metro Newspaper* edition on Thursday, August 10, 2006 at page 11 captioned: "Fight for Women's Rights." In this edition of the paper, she talks about some of her attempts at the Judiciary to arrest some of the social practices affecting women in Cameroon such as domestic battering and other related issues of victimization of women and the girl child.

- (23) High Court of Fako Division: Suit No. HCF/AE57/97–98: unreported.
- (24) A next of kin declaration is a preliminary document to the issue of letters of administration in the former Southern Cameroon. It is issued by a competent customary court, upon an application tendered before the court, appointing a beneficiary to exercise control over a deceased's estate. Upon obtaining the declaration, the beneficiary must proceed to the High Court where letters of administration may be issued on the strength of the declaration.
- (25) The repugnancy test is provided for under Section 27(1) of the SCHL, 1955. According to the test, a rule of customary law will not be enforced if it is repugnant to natural justice, equity, and good conscience. The repugnancy test is often applied alongside the incompatibility test, also provided for under Section 27(1) of the SCHL. The incompatibility test renders unenforceable a customary law that contravenes a written law. The tests are a legacy of British colonial policy in the administration of customary law in Anglophone Cameroon and elsewhere and are used by the superior courts to subject customary law to statutory law and human rights values.
- (26) Supreme Court judgment No. 14L of February 14, 1993. In the South West Court of Appeal, it was registered as Suit No. CASWP/17/931: reported in Cameroon Common Law Report (CCLR), 1997, 213–223.
- (27) Mankon is a small town located in the North West Region of Cameroon.
- (28) Mezam is one of the seven administrative divisions of the North West Region. The others are Boyo, Bui, Donga-Mantung, Menchum, Momo, and Ngo-ketunja.
- (29) Previously, (before December 2006), in entertaining appeals, the Supreme Court of Cameroon operated through the doctrine of *renvoi*. Once it received an appeal from one of the ten regional Courts of Appeal in the country, rather than determining the appeal on its merit, it would issue legal recommendations and refer the matter to another coordinate Court of Appeal for determination. With respect to appeals coming from one of the two Anglophone regions of the country, as was the case in this appeal, the Supreme Court would remit the appeal to the Court of Appeal of the other Anglophone region. Based on the provisions of Law No. 2006/016 of December 29, 2006 (to lay down the organization and functioning of the Supreme Court), the Supreme Court no longer entertains appeals through the process of *renvoi*. Appeals are determined based on their merits.
- (31) Court of Appeal of the South West Region: Suit No. CASWP/CC/12/98: unreported.
- (32) "In the event of the death of the husband, his heir shall have no right over the widow, nor over her freedom or the share of the property belonging to her. She may, provided she observes the period of widowhood of 180 days from the date of the death of her husband, freely remarry without any one laying claim whatsoever to her or any compensation or material benefit for dowry or otherwise received, either at the time of engagement, during marriage or after marriage."

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